

ASSEMBLY BILL

No. 945

Introduced by Assembly Member Koretz

February 18, 2005

An act to add Section 10170 and 10171 to the Public Contract Code, relating to state contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 945, as introduced, Koretz. Public contracts: prospective bidders: disclosure of violations.

The State Contract Act authorizes the Department of General Services, or any other department with authority to enter into contracts, to require prospective bidders of state contracts to complete a questionnaire and financial statement regarding the prospective bidder's financial ability and experience in performing public works contracts.

This bill would require any questionnaire used pursuant to these provisions to require each prospective bidder, as defined, to certify, under penalty of perjury, the number of felonies and misdemeanors, of which the prospective bidder and any of his or her subcontractors have been convicted, within the past 10 years, arising from his or her business practices and involving a violation of environmental laws of the United States, this state, or local government in this state, as specified. The bill would require the prospective bidder to give an explanation for each violation, including the date of occurrence, the final outcome, fines, penalties, or damages, if any, imposed against the prospective bidder, and any other information that the department's questionnaire may require.

The bill would require the department, except in the case where a prospective bidder has successfully appealed his or her

disqualification, as prescribed, to disqualify a prospective bidder if he or she has been convicted of a felony or 3 or more misdemeanors described above.

By requiring prospective bidders to certify that the questionnaires have been answered under penalty of perjury, this bill would expand the scope of the existing crime of perjury, and would thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10170 is added to the Public Contract
2 Code, to read:

3 10170. (a) A state agency, department, and any other state
4 governmental entity shall require each prospective bidder that
5 submits a bid or proposal with respect to a contract for
6 construction, alteration, repair, improvement, professional
7 services, materials, supplies, or equipment to do all of the
8 following:

9 (1) (A) Certify, under penalty of perjury, the number of
10 felonies and misdemeanors, if any, the prospective bidder has
11 been convicted of within the past ten years arising from the
12 prospective bidder's business practices involving a violation of
13 environmental laws of the United States, this state, or any local
14 government in this state.

15 (B) For purposes of this section, "violation of environmental
16 laws" includes unlawful discharges or dumping of hazardous
17 waste, unlawful failures to contain mining effluents, pesticides,
18 bio-hazardous organisms, or livestock wastes, the unlawful
19 harvesting of timber or other natural resources, unlawful
20 activities creating serious environmental impact, or other serious
21 environmental offenses.

(2) Describe any known investigations, administrative actions, civil penalties, or administrative orders related to prospective bidder's unlawful discharges or dumping of hazardous waste, unlawful failures to contain mining effluents, pesticides, bio-hazardous organisms, or livestock wastes, the unlawful harvesting of timber or other natural resources, unlawful activities creating serious environmental impact, or other serious environmental offenses.

(3) Certify, under penalty of perjury, that each subcontractor to be engaged by the prospective bidder on the contract for which the bid is being submitted is not known to the prospective bidder to have been convicted of a violation of environmental laws as described paragraph (1) in the last 10 years.

(b) With respect to the information disclosed pursuant to subdivision (a), a state agency, department, and state governmental entity shall also require each prospective bidder to provide the following information:

(1) The date of the occurrence of the act of the prospective bidder that gave rise to the reported conviction, judgment, determination, or injunction, as applicable.

(2) The outcome and the date of the reported conviction, judgment, verdict, determination, or injunction, as applicable.

(3) The violations or crimes, as applicable that the bidder was found to have committed.

(4) If applicable, the basis for, and the terms of, the injunction.

(5) A breakdown of the amount of, and the basis for, each verdict, fine, count, or action, as applicable, imposed against the prospective bidder.

(6) An explanation, if any, by the prospective bidder with respect to the information disclosed.

(7) Any other information that the state agency, department, or state governmental entity may require.

(c) For purposes of this section "prospective bidder" means one or more of the following who seeks the award of a contract with the state for construction, alteration, repair, improvement, professional services, materials, supplies, or equipment:

(1) In the case of a sole proprietorship, the owner of the sole proprietorship and the proprietorship.

(2) In the case of a partnership, each partner and the partnership.

1 (3) In the case of a corporation, any of the following:

2 (A) Each executive officer and managing officer.

3 (B) Each shareholder who owns more than 25 percent of the
4 corporation's stock and the corporation.

5 (C) Each subsidiary, if the corporation owns 80 percent or
6 more of the subsidiary's stock.

7 (d) If the prospective bidder has done business under a
8 different name within the past five years or has been an executive
9 officer, managing officer, or owner of 25 percent or more of a
10 corporation within the past five years, the information required
11 by this section shall be reported with regard to those other
12 entities.

13 (e) If a prospective bidder acquires an existing proprietorship,
14 partnership, or corporation, any felonies, judgments, or violations
15 of that entity that occurred prior to the time of the acquisition that
16 would otherwise be required to be listed under subdivision (a) of
17 Section 10170 may not be attributed to that bidder.

18 SEC. 2. Section 10171 is added to the Public Contract Code,
19 to read:

20 10171. (a) Except as provided in subdivision (c), the
21 department shall disqualify a prospective bidder from bidding
22 upon, or being awarded, a state contract, or being permitted to be
23 a subcontractor on a state contract, for a period of at least three
24 years from the date of conviction, if the prospective bidder lists
25 one felony conviction or three or more misdemeanor convictions
26 described in paragraph (1) of subdivision (a) of Section 10170.

27 (b) Nothing in this section shall be construed in any way to
28 impair the obligation of any existing contract between a vendor
29 and the state.

30 (c) If a disqualified prospective bidder believes that its
31 violations should not disqualify it from a state contract, that
32 bidder shall be granted a hearing upon request, before the
33 individual at the department designated to hear the appeal, to
34 present evidence as to why it should be deemed a qualified
35 prospective bidder. The hearing shall be promptly held and a
36 written decision shall be promptly rendered. Pursuant to this
37 subdivision, the director of the department may approve a
38 prospective bidder's application, subject to approval by the
39 contracting department or agency.

1 SEC. 3. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the
6 penalty for a crime or infraction, within the meaning of Section
7 17556 of the Government Code, or changes the definition of a
8 crime within the meaning of Section 6 of Article XIII B of the
9 California Constitution.

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